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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HUEY JIUN NGO and NATHAN JOEL McNEILL

Appeal 2016-005943
Application 12/755,350
Technology Center 2400

Before ERIC S. FRAHM, JENNIFER L. McKEOWN, and TERRENCE W. McMILLIN, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 3–9, 11–17, and 19–23. Claims 2, 10, and 18 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We reverse the Examiner’s rejections under (i) 35 U.S.C. § 112(a); (ii) 35 U.S.C. § 112(b); and (iii) 35 U.S.C. § 103(a).

Exemplary Claim

Exemplary claim 1 under appeal, with emphases added to disputed portions of the claim, read as follows:

1. A method comprising:
 - detecting an attempt to establish a remote support session hosted on a remote support appliance that is configured to establish the remote support session between a first device associated with a support representative and a second device associated with a user, *wherein the remote support appliance is under the physical and virtual computing control of the user*;
 - retrieving a credential that provides restricted access privileges in response to the detection; providing the credential to the first device for use in the establishment of the remote support session;
 - establishing the remote support session; and
 - during the remote support session, retrieving, from a third device associated with an access sponsor system, via the remote support appliance, an elevated credential that provides elevated access privileges to the first device in an ad-hoc manner, *wherein the elevated credential is not provided to the support representative*.

The Examiner's Rejections

(1) The Examiner rejected claim 23 under 35 U.S.C. § 112(a), for failing to comply with the written description requirement. Final Act. 4.

(2) The Examiner rejected claims 1, 3–9, 11–16, and 20–23 under 35 U.S.C. § 112(b), as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Final Act. 5.

(3) The Examiner rejected claims 1, 3–9, 11–17, and 19–22 under 35 U.S.C. § 103(a) over the combination of Mohammed et al. (US 2003/0065731 A1; published Apr. 3, 2003), Smith (US 2005/0190769 A1;

published Sept. 1, 2005), and Yadav et al. (US 2007/0180501 A1; published Aug. 2, 2007). Final Act. 6–8.

Principal Issues on Appeal

Based on Appellants’ arguments in the Appeal Brief (App. Br. 5–18) and the Reply Brief (Reply Br. 2–7), as well as the Examiner’s findings, conclusions, and response to Appellants’ arguments (Final Act. 4–8; Ans. 2–8), the following principal issues are presented on appeal:

(1) Did the Examiner err in rejecting claim 23 under 35 U.S.C. § 112(a), for failing to comply with the written description requirements?

(2) Did the Examiner err in rejecting claims 1, 3–9, 11–16, and 20–23 under 35 U.S.C. §112(b) because independent claims 1, 9, and 17 do not particularly point out how a session can be created and hosted at the same time?

(3) Did the Examiner err in rejecting claims 1, 3–9, 11–17, and 19–22 as being obvious because Mohammed fails to teach or suggest that an “the elevated credential is not provided to the support representative,” as recited in independent claim 1, and as similarly recited in remaining independent claims 9 and 17?

ANALYSIS

We have reviewed the Examiner’s rejections (Final Act. 4–8) in light of Appellants’ arguments in the briefs (App. Br. 5–18; Reply Br. 2–7) that the Examiner has erred, as well as the Examiner’s response to Appellants’ arguments in the Appeal Brief (Final Act. 4–8; Ans. 2–8). We agree with Appellants’ arguments and conclusions as to the (i) written description rejection; (ii) indefiniteness rejection; and (iii) obviousness rejection.

REJECTION UNDER 35 U.S.C. § 112(A)

Claim 23 depends from claim 1, and further states that “the elevated credential is provided *only to the second device*” (claim 23) (emphasis added), as opposed to merely *not* providing the elevated credential to the support representative as recited in claim 1. The Examiner finds that paragraph 41 of Appellants’ Specification only supports that the representative system 103b (the support representative which is located/associated with the second device recited in claim 23) is provided with the elevated privileges (Final 4), and that one of ordinary skill in the art would understand that the credentials can be transmitted to an entity without exposing the credentials to the entity receiving them (i.e., the credentials could be encrypted and no key would be sent with the transmission of the credentials). Ans. 2–3. Paragraph 41 describes the embodiment shown in Figure 5A of Appellants’ Drawings, and is not relied on by Appellants to support the invention recited in claim 1 (*see* App. Br. 2–3).

There is no requirement that the disclosure contain “either examples or an actual reduction to practice;” rather, the critical inquiry is whether the patentee has provided a description that “in a definite way identifies the claimed invention” in sufficient detail that a person of ordinary skill would understand that the inventor was in possession of it at the time of filing. *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010); *Koito Mfg. Co. v. Turn-Key-Tech., LLC*, 381 F.3d 1142, 1154 (Fed. Cir. 2004). That assessment “requires an objective inquiry into the four corners of the specification.” *Ariad*, 598 F.3d at 1351.

The following four portions of the Specification support the recited feature recited in dependent claim 23 of only providing the elevated credential to the second device:

(1) Paragraph 21 describes a mechanism that “isolates the need for the representative to know the actual credentials.”

(2) Paragraph 25 describes that “the access sponsor can choose to enter the proper elevated credentials (without exposing the credentials to the support representative).”

(3) Paragraph 33 describes that agent 301 (Fig. 3A) can obtain the “elevated credentials that can be used (without exposing the actual credentials) for a pre-configured set of support representatives who are allowed to use this agent.”

(4) Paragraph 46 describes step 517 of Figure 5B, where a requesting representative “gains elevated privileges without actually learning of the credential information to perform the support tasks at hand.”

Appellants disclose and claim a first device located/associated with a support representative, a second device located/associated with a user (the second device of claim 23), and a third device located/associated with an access sponsor system (App. Br. 2–3; claim 1 from which claim 23 depends; *see* Figs. 1B, 3A, 5B, 6B, 7B, 8A, and 8B).

In light of our review of the originally filed Specification portions and Drawings just highlighted above, we concur with Appellants’ contentions (App. Br. 6–9; Reply Br. 2–3) that claim 23 is fully supported and enabled by the Specification as originally filed, and in particular by paragraphs 21, 25, 33, and 46. We find that paragraphs 21, 25, 33, and 46, taken with the remainder of the Specification as originally filed, including the Drawings

and embodiments relied on by Appellants’ in the “Summary of the Claimed Subject Matter” in the Appeal Brief (App. Br. 2–3), convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. *See Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991) (emphasis omitted.)

Accordingly, we do not sustain the Examiner’s rejection of claim 23 under 35 U.S.C. § 112(a).

REJECTION UNDER 35 U.S.C. § 112(B)

The test for definiteness under 35 U.S.C. § 112(b) is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted). Claims must “particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention.” 35 U.S.C. § 112(b).

Independent claims 1 and 9 each recite detecting “an attempt to establish a remote support session hosted on a remote support appliance.” The Examiner finds that because the remote support session is recited as “*hosted* on a remote support appliance” (claims 1 and 9) (emphasis added), instead of “*to be* hosted on a remote support appliance,” the proceeding recitation in the claims of “establishing the remote support session” causes indefiniteness (because the session has not yet been established). *See* Final 5; Ans. 3. However, in our view, the claims merely recite an *attempt* to establish a session, and one of ordinary skill in the art would understand this to mean the session has not yet been established.

In view of the foregoing, we are persuaded by Appellants’ arguments (App. Br. 10; Reply Br. 3–4) that claims 1, 3–9, 11–16, and 20–23 are

definite in light of the Specification (as originally filed) with respect to defining the timing of the establishment of the remote support session.

Accordingly, Appellants have established that the Examiner erred in rejecting claims 1, 3–9, 11–16, and 20–23 under § 112(b) as being indefinite. Accordingly, we do not sustain the § 112(b) rejection of claims 1, 3–9, 11–16, and 20–23.

REJECTION UNDER 35 U.S.C. § 103(A)

Because we find that paragraph 51, and any other cited portion of Mohammed, fails to teach or suggest that “the elevated credential is not provided to the support representative” as recited in claims 1, 9, and 17, the Examiner has not established a *prima facie* case of obviousness with respect to claims 1, 3–9, 11–17, and 19–22. Paragraph 51 of Mohammed describes a remote support session (*see* Fig. 4) that begins by user initiation. Then, a ticket is created (Fig. 4, step 402) including (i) the internet address of the user, and (ii) the credentials or encrypted password to the remote assistance account along with (iii) a key K1. Finally, Mohammed describes step 403, where the ticket including the key is “transmitted to an expert” (¶ 51). Thus, paragraph 51 fails to disclose that the key is *withheld* from the expert as recited in claims 1, 9, and 17.

In light of Mohammed’s silence as to withholding the key from the expert, we find Appellants’ arguments (App. Br. 12–13) that Mohammed fails to disclose such a feature persuasive. Additionally, one of ordinary skill in the art would not understand or expect that a teaching of sending the encrypted password and key to the expert/support representative (as in Mohammed) would disallow the expert access to the elevated credentials. In fact, quite the opposite would be expected. We are, therefore, constrained

by the record to find the Examiner erred in rejecting independent claims 1, 9, and 17, as well as claims 3–9, 11–17, and 19–22 depending therefrom as being obvious over the combination of Mohammed, Smith, and Yadav.

CONCLUSIONS

The Examiner erred in rejecting (i) claim 23 under U.S.C. § 112(a) for failing to comply with the written description and enablement requirements; (ii) claims 1, 3–9, 11–16, and 20–23 under U.S.C. § 112(b) for being indefinite; and (iii) claims 1, 3–9, 11–17, and 19–22 as being obvious under 35 U.S.C. § 103(a) over the combination Mohammed, Smith, and Yadav because Mohammed because Mohammed fails to teach or suggest that “the elevated credential is not provided to the support representative,” as recited in independent claim 1, and as similarly recited in remaining independent claims 9 and 17.

DECISION

The Examiner’s written description, indefiniteness, and obviousness rejections are all reversed.

REVERSE